

Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 ISO-00 L-03 CAB-09 CIAE-00 COME-00

DODE-00 INR-10 NSAE-00 RSC-01 FAA-00 /060 R

DRAFTED BY EB/AVP:JASILBERSTEIN:VLV

APPROVED BY EB/OA:JSMEADOWS

CAB - MR. DEEGAN

EUR/WE - MR BEIGEL

L/EB - MR. GAITHER

----- 069186

P 242205Z OCT 73

FM SECSTATE WASHDC

TO AMEMBASSY ROME PRIORITY

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E.O. 11652: N/A

TAGS: ETRN, IT

SUBJECT: CIVAIR - SEABOARD CARGO RATES

REF: (A) ROME 11468; (B) ROME 6924; (C) STATE 146381;

(D) ROME 9897

1. USG POSITION IS THAT SEABOARD AUGUST 27 FILING WITH CIVILAVIA BECAME EFFECTIVE AS OF SEPT 26--INSOFAR AS ITALIAN LEGAL SITUATION CONCERNED--IN VIEW OF FAILURE OF GOI TO EXPRESS DISSATISFACTION IN ALLOTTED TIME. FACT OF SEABOARD FAILURE TO FILE WITH USCAB THE SAME TIME DID NOT AFFECT LEGAL SITUATION ON ITALIAN SIDE.

2. SEABOARD FILED WITH CAB ON SEPT 21. SUBSEQUENTLY SEABOARD PETITIONED CAB FOR PERMISSION TO PUT TARIFF INTO EFFECT PRIOR TO OCT 21 (NORMAL 30-DAY WAIT). CAB AUTHORIZED AS OF OCT 17. AS OF THAT DATE SEABOARD HAD A VALID TARIFF LEGAL AT BOTH ENDS. AS COMMON CARRIER, SEABOARD HAS NO RPT NO ALTERNATIVE BUT TO APPLY THIS LEGAL TARIFF TO SHIPMENTS NO ALTERNATIVE BUT TO APPLY THIS LEGAL TARIFF TO SHIPMENTS BY CUSTOMERS SEEKING TO UTILIZE THIS SERVICE.

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3. WE SEE NO JUSTIFICATION FOR SEABOARD NOT TO UTILIZE THIS TARIFF AND NO REASON FOR ANY NEW FILING.

4. GOI HAS OPTION, AS EMBASSY OBSERVES PARA 3 REF A, OF EXPRESSING DISSATISFACTION UNDER ARTICLE 10(E) WITH AN

EXISTING RATE. SITUATION WOULD OF COURSE BE SOMEWHAT DIFFERENT THAN ACTION UNDER ARTICLE 10(D) AGAINST A PROPOSED RATE. MOST OBVIOUS DIFFERENCE IS THAT PROPOSED RATE CANNOT TAKE EFFECT UNTIL PROCESSES CONTEMPLATED IN THE AGREEMENT ARE RUN THROUGH, WHILE UNDER 10(E) EXISTING RATE STAYS IN EFFECT, AT LEAST UNTIL PROCESSES ENVISIONED COMPLETED.

5. UNDER THESE CIRCUMSTANCES DEPT/CAB ARE NOT RPT NOT ADVISING SEABOARD AS SUGGESTED PARA 5 REF A.

6. COMMENT: WE WERE AWARE OF ANTECEDENTS IN THIS CASE AS REFLECTED REFTELS B AND C WHEN SEABOARD HAD MERELY EXPRESSED INTENTION WITH REGARD TO POSSIBLE FILING BUT WITHOUT SPECIFYING PROPOSED EFFECTIVE DATE. WHATEVER WE MAY FEEL OR SUSPECT RE SEABOARD'S SUBSEQUENT TACTICS, FACT IS THAT INsofar AS AUGUST 27 FILING CONCERNED, GOI ACTIONS REPORTED REF D DID NOT CONSTITUTE FORMAL LEGAL ACTION ENVISIONED IN AGREEMENT AND WHEN SEABOARD EVENTUALLY FILED WITH CAB, LATTER COULD FIND NO BASIS TO JUSTIFY ITS OWN EXPRESSION OF DISSATISFACTION. HENCE IN OUR VIEW LEGAL SITUATION REMAINS AS DESCRIBED PARAS 1 THROUGH 4 ABOVE. KISSINGER

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